

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A :

JUDGE, NO. 01-244 :
2670

CASE NO.: SC01-

(Judge Charles W. Cope) :

_____:

IN LIMINE MOTION TO EXCLUDE ALL EVIDENCE
RELATING TO AN UNRELATED 1996 ARREST

The Honorable Charles W. Cope, through the undersigned counsel, respectfully request this Commission to enter an order excluding any and all evidence regarding an arrest of Judge Cope in 1996 for driving while under the influence. In support of this request, Judge Cope states the following:

1. Special Counsel has listed William Dearborn as a witness in this cause. In addition, Special Counsel has listed the following videotape as an exhibit he intends to use in the Final Hearing before this Commission: "Videotape of Judge Cope's refusal to take a breathalyzer test following his 1996 arrest in Naples, Florida for DUI."

2. William Dearborn is believed to be an Assistant State Attorney who will testify as to some circumstances related to an arrest of Judge Cope in 1996 for driving under the influence. The charges against Judge Cope relating to such arrest were ultimately dismissed for lack of probable cause after it was determined by the court that the arresting officer had misrepresented certain material facts. The videotape listed as

an intended Exhibit of special Counsel in this cause relates to the same arrest.

3. Special Counsel previously noticed the deposition of William Dearborn for the purported purpose of authenticating the video referenced herein. Judge Cope motioned the Commission for a protective order. Judge Jorgenson, on behalf of this Commission, granted the requested protective order and expressly prohibited Special Counsel from taking the deposition of William Dearborn. In doing so, Judge Jorgenson ruled that the 1996 arrest had no relevance to and the noticed deposition would not lead to the discovery of admissible evidence before this Commission (see attached Order as Exhibit "A").

3. The circumstances concerning the arrest that occurred six (6) years ago and for which William Dearborn would have any arguable knowledge and to which the video relates has absolutely no relation to the issues before this Commission that are to be tried on June 24, 2002. The charges set forth in the Amended Notice of Formal Proceedings have absolutely no relevance to an arrest that occurred six (6) years ago on charges that were ultimately dismissed for lack of probable cause. For example, it is uncontested that Judge Cope is not charged with driving under the influence in the disciplinary proceedings before the Commission. Furthermore, Judge Cope has readily admitted throughout

these proceedings that he was intoxicated at the time of the alleged conduct from which the disciplinary charges stem.

4. Clearly, if the deposition of William Dearborn and the purported authentication of the 1996 videotape are not within the realm of matters properly discoverable in this cause, as ruled by Judge Jorgenson, then such witness and exhibit certainly have no relevance to the instant proceedings.

5. Furthermore, assuming that such arrest has some arguable relevance to this cause (which it does not), such relevance is substantially outweighed by the undue prejudice to Judge Coper resulting from admission of such evidence.

WHEREFORE, Judge Cope respectfully requests this Court to enter an order excluding all evidence regarding the 1996 arrest of Judge Cope, including but not limited to the testimony of William Dearborn and the 1996 video referenced herein.

Respectfully submitted,

ROBERT W. MERKLE, ESQ.
Florida Bar Number: 138183
MERKLE & MAGRI, P.A.
5510 West LaSalle Street
Tampa, Florida 33607
Telephone: (813) 281-9000
Facsimile: (813) 281-2223

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and U.S. Mail to: Judge James R. Jorgenson, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Avenue, Miami, Florida 33175-1716; John Beranek, Esq., Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32302; John S. Mills, Esq., Special Counsel, Foley & Lardner, 200 Laura Street, Jacksonville, Florida 32201-0240; Brooke S. Kennerly, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; Thomas C. MacDonald, Jr., Esq., General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602, this _____ day of June, 2002.

ROBERT W. MERKLE, ESQ.

DJP:jc

Judge James R. Jorgenson
Chair of the Judicial Qualifications
Commission Hearing Panel
3rd District Court of Appeal
2001 S.W. 117th Avenue
Miami, Florida 33175-1716

John Beranek, Esquire
Counsel to the Hearing Panel of the
Judicial Qualification Commission
P.O. Box 391
Tallahassee, Florida 32302

John S. Mills, Esquire
Special Counsel
Foley & Lardner
200 Laura Street
Jacksonville, Florida 32201-0240

Brooke S. Kennerly
Executive Director
Florida Judicial Qualifications Commission
1110 Thomasville Road
Tallahassee, Florida 32303

Thomas C. MacDonald, Jr., Esquire
General Counsel
Investigative Panel of the Judicial Qualifications Commission
100 North Tampa Street, Suite 2100
Tampa, Florida 33602